

**BOISE, WEDNESDAY, JUNE 11, 2008 AT 8:50 A.M.**

**IN THE SUPREME COURT OF THE STATE OF IDAHO**

<b>JONATHAN CANTWELL,</b>	)	
	)	
<b>Plaintiff-Appellant,</b>	)	
	)	
<b>v.</b>	)	<b>Docket No. 34283</b>
	)	
<b>THE CITY OF BOISE, JOHN WALHOF,</b>	)	
<b>RICHARD DEES and WILLIAM NARY,</b>	)	
	)	
<b>Defendants-Respondents.</b>	)	

---

Appeal from the District Court of the Fourth Judicial District of the State of Idaho, Ada County. Hon. Ronald J. Wilper, District Judge.

Michael B. Schwarzkopf, Boise, for appellant.

Scott B. Muir, Boise City Attorney's Office, Boise, for respondent.

---

Jonathan Cantwell commenced employment with the City of Boise in the Public Works Department in February 1994. In late March, after an incident involving swearing and yelling at a coworker, the City placed Cantwell on administrative leave pending an investigation into his workplace behavior. As a result of that investigation, the City terminated Cantwell pursuant to its workplace harassment and workplace violence policies. Cantwell appealed this action pursuant to the City's due process procedures, and a hearing officer ordered the City to reinstate Cantwell following a disciplinary suspension. The City subsequently entered into an agreement with Cantwell by which he could return to work upon completion of a number of conditions, including written apologies to coworkers, and the completion of a psychiatric evaluation demonstrating his fitness to return to work. Although Cantwell initially executed this agreement, he subsequently declined to abide by the conditions, and sent a letter protesting the City's imposition of these conditions. Based on his failure to comply with the conditions, the City terminated Cantwell a second time for job abandonment and insubordination. Cantwell again appealed this decision to a hearing officer. This time, the hearing officer upheld the City's decision, finding it had good cause to terminate Cantwell. Over a year following this decision, Cantwell filed an independent civil action in district court, alleging the City breached its contract with Cantwell, violated his civil rights, and that certain individual supervisors tortiously interfered with Cantwell's employment contract with the City, and tortiously interfered with his prospective economic advantage. The City filed a motion for summary judgment on each of these claims, which the district court granted in full. Cantwell appeals this decision "in total."

**BOISE, WEDNESDAY, JUNE 11, 2008 AT 10:00 A.M.**

**IN THE SUPREME COURT OF THE STATE OF IDAHO**

**DAVE TODD,** )  
 )  
 **Plaintiff-Respondent,** )  
 )  
 **v.** )  
 )  
 **SULLIVAN CONSTRUCTION, LLC,** )  
 )  
 **Defendant-Appellant.** )  
 \_\_\_\_\_ )  
 )  
 **SULLIVAN CONSTRUCTION, LLC, f/ka** )  
 **SULLIVAN TODD CONSTRUCTION, LLC,** )  
 )  
 **Counterclaimant-Appellant,** )  
 )  
 **v.** )  
 )  
 **DAVE TODD,** )  
 )  
 **Counterdefendant-Respondent.** )  
 \_\_\_\_\_ )  
 )  
 **SULLIVAN CONSTRUCTION, LLC,** )  
 )  
 **Plaintiff-Appellant,** )  
 )  
 **v.** )  
 )  
 **JASON PETERSEN,** )  
 )  
 **Defendant-Respondent.** )  
 )  
 )  
 \_\_\_\_\_ )

**Docket No. 33954**

Appeal from the District Court of the Fifth Judicial District of the State of Idaho, Blaine County.  
Hon. Robert J. Elgee, District Judge.

Elam & Burke, P.A., Boise, for Defendant-Counterclaimant-Plaintiff-Appellant.

Lee P. Ritzau, Ketchum, for Plaintiff-Counterdefendant-Defendant-Respondents.

\_\_\_\_\_

Sullivan Construction, LLC (Sullivan Construction) appeals, among other things, the district court's grant of Dave Todd (Todd) and Jason Petersen's (Petersen) motion in limine on the ground that the court abused its discretion in ruling that expert testimony was required to establish lost profits. Sullivan Construction also appeals the court's grant of Todd's motion for directed verdict on Sullivan Construction's counterclaim against Todd for willful misconduct under I.C. § 53-622.

Todd and Brett Sullivan (Sullivan) were members of Sullivan Todd Construction, LLC (STC) until April 29, 2005, when Sullivan bought Todd's membership interest in the company. Sullivan subsequently changed the name of the company to Sullivan Construction, LLC, and on July 14, 2005, Todd sued Sullivan Construction on wage and breach of contract claims. Sullivan Construction counterclaimed Todd for, among other things, willful misconduct under I.C. § 53-622 and tortious interference with prospective business relations – and also sued its former concrete foreman, Jason Petersen (Petersen), on the tortious interference claim. The district court consolidated the cases on June 22, 2006.

On November 27, 2006, Todd and Petersen filed a motion in limine, seeking to exclude evidence of lost profits that Sullivan Construction would have made had it performed certain work for Petra, Inc. on the ground that such evidence violated Idaho Rule of Evidence (IRE) 701. Ruling from the bench, the district court granted Todd and Petersen's motion in limine, excluding evidence and testimony of lost profits on grounds that expert testimony was required to establish lost profits, and Sullivan Construction had not disclosed any experts – and because Sullivan Construction had failed to disclose any evidence of lost profits pre-trial.

On December 5, 2006, Todd also filed a motion for directed verdict on Sullivan Construction's counterclaim against him for willful misconduct under I.C. § 53-622. The court granted Todd's motion on the same day and three days later, the jury found Todd and Petersen jointly and severally liable for tortious interference with a prospective business opportunity and awarded nominal damages in the amount of 100 dollars. The district court entered its judgment on January 5, 2007, and Sullivan Construction timely appealed.

**BOISE, WEDNESDAY, JUNE 11, 2008 AT 11:10 A.M.**

**IN THE SUPREME COURT OF THE STATE OF IDAHO**

**STATE OF IDAHO,**

**Plaintiff-Respondent,**

**v.**

**HAROLD E. GRIST, JR.,**

**Defendant-Appellant.**

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**Docket No. 33652**

Appeal from the District Court of the Second Judicial District of the State of Idaho, Nez Perce County. Honorable Jeff M. Brudie, District Judge.

Molly J. Huskey, State Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General, Boise, for respondent.

---

This appeal arises from Harold Grist's convictions by a jury for seven counts of lewd conduct with a child under sixteen years of age, two counts of sexual battery of a minor child sixteen or seventeen years of age, and one count of sexual abuse of a child under sixteen years of age. The charges all stemmed from Grist's conduct with his live-in-girlfriend's daughter. At trial, the district court permitted the State to admit evidence pursuant to Idaho Rule of Evidence 404(b) of similar sexual misconduct for which Grist was never charged. That conduct stemmed from Grist's actions with his ex-wife's daughter. On appeal, Grist argues that Idaho Courts treat the admission of evidence under I.R.E. 404(b) in child sexual misconduct cases differently than other cases, which results in the admission of prejudicial evidence against the defendant. Grist asks this Court to: (1) overrule any cases that treat the admission of evidence pursuant to I.R.E. 404(b) in child sexual misconduct cases differently than other cases; and (2) reverse his conviction and remand his case for a new trial involving the proper application of I.R.E. 404(b).